

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA

HUNTINGTON DIVISION

**ENTERED**

JUL 23 2003

SAMUEL L. KAY, CLERK  
U.S. District & Bankruptcy Courts  
Southern District of West Virginia

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 3:02-00231

JOHN DAVID MOONEY

**ORDER**

Defendant Mooney filed, pro se, a Motion for Reconsideration of Sentence. The Court notes Defendant, by counsel, filed a Notice of Appeal on May 16, 2003 and the appeal remains pending. Defendant's Motion attacks his sentence primarily with his argument that the Court improperly found him to be an armed career criminal based on prior convictions. While the Court will not address the substance of the Motion, these arguments may be raised in a properly and timely filed motion pursuant to 28 U.S.C. §2255. There is no other rule or statute which allows the Court to consider Defendant's arguments.

For these reasons, the Court **DENIES** Defendant's Motion for Reconsideration. The Clerk is directed to return a copy of the Motion for Reconsideration to the Defendant along with the forms for filing a Section 2255 Motion. The Clerk is directed to forward a copy of this Order to counsel of record and any unrepresented parties.

ENTER: July 23, 2003

  
ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE